DARSHAN, SYED, AMARJIT & PARTNERS v. SANIAH SABRI

HIGH COURT MALAYA, IPOH
SU TIANG JOO JC
[CIVIL APPEAL NO: AA-12ANCVC-22-05-2021]
6 DECEMBER 2021

Abstract – *A judgment in default, entered following the failure of one party to enter appearance, ought to be set aside if it was incorrectly addressed and if the intended recipient did not receive the writ and judgment in default. Such judgment in default is irregular as the writ and statement of claim is regarded as not properly served.*

CIVIL PROCEDURE: *Judgment – Judgment in default – Setting aside – Allegation of non-receipt of writ and statement of claim – Writ and statement of claim incorrectly addressed – Whether properly served – Intended recipient denied receiving writ and statement of claim and did not enter appearance – Judgment in default entered against intended recipient – Whether judgment in default irregular – Whether ought to be set aside*

The respondent had appointed the appellant to act for her in a road accident suit. The appellant proceeded to file a suit on behalf of the respondent for the road accident; Tan Sri Darshan Singh ('TSDS') was the counsel managing the matter and he attended multiple court sessions. TSDS later learned, without being notified by the respondent, that the road accident had been settled by the respondent for a sum of RM3,300,000 with costs of RM330,000 and that, in arriving at the settlement, the respondent was represented by another firm of solicitors. The respondent contended that she had sent a letter to the appellant terminating the latter's appointment but the appellant denied receiving such letter. This prompted the appellant to launch a suit against the respondent, at the Sessions Court, claiming for a sum of RM316,358 being professional services rendered to the respondent ('recovery suit'). As the respondent did not enter appearance, the appellant successfully obtained a judgment in default ('JID') against him. Acting on the JID, the appellant commenced garnishee proceedings which caused the respondent's bank account to be frozen. Upon application by the respondent, the JID was set aside by the Sessions Court. Hence, the present appeal. It was not disputed that the writ of summons and statement of claim ('SOC') were caused to be issued carrying the address of the respondent to be No. 27, Jalan Kasturi 26, BB8, Seksyen BB8, Bandar Baru Bukit Beruntung, 48300 Rawang, Selangor ('address No. 26'). On the premise it was served upon the respondent at address No. 26, the Registrar of the Sessions Court issued a certificate of non-appearance and JID. However, the respondent contended that her address was No. 27 on Jalan Kasturi 2C and she never received the writ and SOC. The appellant asserted that the respondent had

received the writ and SOC under a cover letter dated 14 July 2020, all enclosed in one envelope. The respondent, whilst admitting having received a letter dated 13 July 2020, which was addressed to address No. 26, however, denied receiving the writ and SOC under the appellant's cover letter dated 14 July 2020.

Held (dismissing appeal):

(1) The covering letter enclosing the writ and SOC exhibited in the affidavit of service was in fact dated 14 July 2020 and the AR registered card was dated one day earlier *ie* 13 July 2020. Although the AR registered card with the date 13 July 2020 was seemingly affixed to the covering letter dated 14 July 2020, as a matter of logic and common sense, one could not possibly send out a letter dated 14 July 2020 by way of AR registered post one day earlier *ie* 13 July 2020. It could not be denied that the writ and SOC carried the address No. 26. The writ and SOC were not served upon the respondent and, on that ground, the JID was irregular and properly set aside by the Sessions Court Judge. (paras 24-26 & 35-36)

(2) The appellant's appeal was dismissed with costs and the respondent was awarded RM3,000 subject to allocator to be paid by the respondent. Following the dismissal of the appeal, the appellant sought a stay of the order so that the monies in the respondent's account which had been garnished could remain frozen. With the JID having been set aside, there was no judgment extant for execution proceedings and, therefore, the application was refused. Upon the application by the respondent, consequential orders were granted that the monies which had been frozen by reason of the execution proceedings and which had remained frozen. (paras 51-52)

Case(s) referred to:

Goh Teng Whoo & Anor v. Ample Objectives Sdn Bhd [2021] 4 CLJ 348 FC ***(refd)***

Hasil Bumi Perumahan Sdn Bhd & Ors v. United Malayan Banking Bhd [1994] 1 CLJ 328 SC ***(refd)***

Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor [1997] 3 CLJ 305 FC ***(refd)***

Lee Hee Hong v. EON Bank Bhd [2014] 1 LNS 600 CA ***(refd)***

Sergeant Salleh Zakaria & Anor v. Datuk Ramlee Marahaban [2021] 8 CLJ 117 HC ***(refd)***

Stone World Sdn Bhd v. Engareh (M) Sdn Bhd [2020] 9 CLJ 358 FC ***(foll)***

Wee Tiang Teng v. Ong Chong Hooi & Anor [1978] 1 LNS 234 FC ***(refd)***

Legislation referred to:

Legal Profession (Practice and Etiquette) Rules 1978, r. 54

Rules of Court 2012, O. 10 r. 1(1), O. 42 r. 13, O. 55 r. 2

Other source(s) referred to:

The White Book on the Malaysian Civil Procedure 2021, vol 1, p 812, para 55/2/1

For the appellant - Darshan Singh Gill; M/s Darshan, Syed, Amarjit & Partners
For the respondent - Adelina Shamini D'Cruz & Hambhika Nair; M/s Adel D'Cruz & Partners

Reported by Najib Tamby

JUDGMENT

Su Tiang Joo JC:

Introduction

[1] On 6 August 2020, the law firm of Messrs Darshan, Syed, Amarjit & Partners (appellant) obtained a judgment in default of appearance against the respondent in the Sessions Court at Ipoh for legal fees and disbursements to the sum of RM316,358 together with interest thereon at 5% per annum from 21 June 2018 until full realisation and costs of RM911 (the "JID").

[2] Upon application by the respondent, the JID was set aside by the Sessions Court on 30 April 2021. This meant that the respondent was at liberty to defend the suit. Dissatisfied, the appellant appealed to this court.

[3] On 6 October 2021, this court dismissed the appeal with costs agreed at RM3,000 subject to allocator.

[4] By notice of appeal (encl. 9) dated 26 October 2021 the appellant appealed to the Court of Appeal seeking to hold onto the JID and these are the grounds of judgment for the dismissal of the appeal.

Background Of The Facts

[5] Underlying the suit for legal fees is a road accident involving the respondent and her family on 13 November 2014 (the "2014 road accident").

[6] The appellant asserts that the respondent met their Tan Sri Darshan Singh a/l Gurdial Singh ("Tan Sri Darshan") in person at their office on 24 November 2014 and had appointed their law firm to act (encl. 3 p. 44, para 5) for her in the 2014 Road Accident and they had advanced a sum of RM5,000 to the respondent.

[7] However, the respondent asserts that the appellant's agent met her at the Tuanku Ja'afar Hospital at Negeri Sembilan to get her to appoint the appellant for the 2014 Road Accident (encl. 3 pp. 69 and 70, para. 2). She admits having received an advance of RM5,000 but had made repeated calls to Tan Sri Darshan to make arrangements to repay the same but without success (encl. 3 p. 209, paras. 2 and 3) and exhibited her telephone call logs (encl. 3 pp. 213 to 236).

[8] On 27 January 2015, the appellant filed a suit on behalf of the respondent to claim for the 2014 road accident in the Sessions Court at Seremban carrying the suit number A53KJ-53-01-2015 (encl. 3 p. 54, para. 4).

[9] Thereafter, the appellant asserted that they and, in particular, Tan Sri Darshan who was the counsel managing the matter made multiple court attendances in the Sessions Court (encl. 3 p. 4, para. 4), the High Court (encl. 3 p. 5, para. 7) and the Court of Appeal (encl. 3 p. 6, para. 11).

[10] On 23 March 2017, Tan Sri Darshan had occasion to attend related proceedings in the Court of Appeal and was informed that the 2014 Road Accident had been settled by the respondent for a sum of RM3,300,000 with costs of RM330,000 ("the said settlement"). This came as a surprise to the appellant as they were never notified by the appellant of any settlement (encl. 3 p. 56, para. 11).

[11] As it turned out, in arriving at the said settlement, the respondent was represented by another firm of solicitors, Messrs G. Dorai & Co., with the respondent asserting (encl. 3 p. 73, para. 19) that she had through Messrs G. Dorai & Co. sent a letter dated 5 December 2014 (encl. 3 p. 89) to the appellant terminating the appointment of the appellant (encl. 3 p. 73, para. 19). The appellant denied receiving such a letter of termination (encl. 3 p. 97, para. 35).

[12] The appellant then commenced a suit ("recovery suit") claiming a sum of RM316,358 together with interest and costs for the professional services rendered by them.

[13] On the premise that the writ of summons and statement of claim in the recovery suit was duly served upon the respondent by way of A.R registered post on 14 July 2020 (encl. 3 p. 23, para. 2) and with the respondent not having entered appearance, the JID was obtained on 6 August 2020 (encl. 3 p. 21).

[14] Acting on the JID, the appellant then commenced garnishee proceedings which caused the respondent's bank account with RHB Bank Bhd to be frozen. The respondent asserted that it was only then she came to know for the first time about the recovery suit brought by the appellant as RHB Bank Bhd had by a letter dated 28 September 2020 notified her of the freezing of her account (encl. 3 p. 15, para. 10).

[15] The respondent deposed on affidavit that, thereafter, on 1 October 2020, she went to the appellant's office to secure information about the garnishee proceedings but was not served with any cause papers.

[16] The appellant contended otherwise and deposed that after a long discussion, the respondent agreed in writing by a letter dated 1 October 2020 duly witnessed by the respondent's brother-in-law, one Azman bin Saarani to pay a sum of RM100,000 being the amount the respondent said she could only afford then (encl. 46 p. 68, para. 20).

[17] On 12 October 2020, the respondent appointed her current solicitors on record for this matter, Messrs Adel D'Cruz and Partners, to obtain cause papers of the recovery suit from the appellant (encl. 3 p. 15, para. 12) but they were not successful (encl. 3 p. 16, para. 13). A

[18] The next day, on 13 October 2020, the respondent then went to RHB Bank Bhd to secure the case number of the recovery suit (encl. 3 p. 16 para. 13). B

[19] Upon obtaining it, the respondent passed it on to her current solicitors who conducted a file search and filed the application (encl. 3 pp. 9 to 12) on 15 October 2021 for an extension of time to make the following applications: (i) to have the JID set aside, (ii) for leave to file her defence and (iii) for a stay of the execution of the JID. C

[20] After an exchange of affidavits with submissions filed and after hearing the parties, on 30 April 2021, the learned Sessions Court Judge (LSJ) allowed the respondent's application where the respondent was given leave to defend the appellant's claim. This led to the appeal by the appellant before this High Court ("court"). D

Appeal To Be By Way Of Re-hearing

[21] Order 55 r. 2 of the Rules of Court 2012 provides that all appeals to the High Court from the subordinate courts shall be by way of re-hearing. *The White Book on the Malaysian Civil Procedure 2021* vol. 1 at p. 812, para. 55/2/1 that is reproduced below, explain the meaning of re-hearing: E

> In a re-hearing, a judge is not tasked to consider whether the lower court judge had exercised his discretion correctly or had properly considered the relevant material. He would consider the case as if it came before him for the first time. F

Law On Setting Aside A JID

[22] The law on setting aside a judgment in default of appearance has been succinctly set out by His Lordship, Lim Hock Leng J in *Sergeant Salleh Zakaria & Anor v. Datuk Ramlee Marahaban* [2021] 8 CLJ 117 at 120 (HC), which I gratefully adopt and reproduce below: G

> [7] A JID can be set aside if it was irregularly obtained or entered, for instance, if it was in non-compliance of the law, or there was non-service of the writ or the court lacked jurisdiction. In such an instance, the defendant will be entitled to set it aside as of right, irrespective of merits, *ex debito justitiae* (see *Tuan Hj Ahmed Abdul Rahman v. Arab-Malaysian Finance Berhad* [1996] 1 CLJ 241), and will be entitled to costs (see *Muniandy Thamba Kaundan & Anor v. Development & Commercial Bank Berhad & Anor* [1996] 2 CLJ 586; [1996] 1 MLJ 374, where Edgar Joseph Jr FCJ cited with approval the reasoning of Russell LJ in *White v. Weston* (1968) 2 All ER 842, 846). These features distinguish an irregular JID from a JID regularly H I

A entered which can still be set aside if it can be shown that there is a defence on merits (see *Fira Development Sdn Bhd v. Goldwin Sdn Bhd* [1989] 1 CLJ 1; [1989] 1 CLJ (Rep) 32). All that said, subsequent to these apex court decisions, an application to set aside or vary a JID must now be made and served on the other party within 30 days 'after the receipt of the order or judgment by him.' See O. 42 r. 13, Rules of Court 2012.

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See also *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* [1997] 3 CLJ 305.

[23] It, therefore, behoves this court to consider all the materials afresh. After having done so, this court has to ascertain whether the JID was one which was regularly obtained. If it was not, the respondent would be entitled C to have the JID set aside as of right with costs in her favour. However, if it was, the respondent can still succeed to have it set aside if she can show she has a defence on the merits but in such a circumstance, she will be penalised with costs.

Irregular JID

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[24] The writ of summons and statement of claim ("writ and SOC") was caused to be issued carrying the address of the respondent to be No. 27, Jalan Kasturi 26, BB8, Seksyen BB8, Bandar Baru Bukit Beruntung, 48300 Rawang, Selangor (encl. 3 p. 2) (the said "address no. 26").

E **[25]** On the premise it was served upon the respondent at the said address no. 26 by A.R. registered post, the Registrar of the Sessions Court at Ipoh issued a certificate of non-appearance dated 3 August 2020 (encl. 3 p. 64) with JID entered on 6 August 2020 (encl. 3 p. 65).

[26] However, the respondent deposed on affidavit (encl. 3 p. 14, para. 3) F that her address is in fact No. 27, Jalan Kasturi 2C, BB8, Seksyen BB8, Bandar Baru Bukit Beruntung, 48300 Rawang, Selangor (the said "address no. 2C") and she never received the writ and SOC (encl. 3 p. 14, paras. 5, 18 and 19).

[27] In *Goh Teng Whoo & Anor v. Ample Objectives Sdn Bhd* [2021] 4 CLJ G 348, the Federal Court through His Lordship, Abdul Rahman Sebli FCJ held that where service of a writ is alleged to have been effected by way of sending the same to a defendant by A.R. registered post pursuant to O. 10 r. 1(1) of the Rules of Court 2012, the court cannot seal a judgment in default of appearance where the affidavit of service does not exhibit the A.R. registered H card containing an endorsement as to receipt by the defendant himself or someone authorised to accept service of the same on his behalf. His Lordship held that it is anathema to the concept of justice and fair play that a defendant who has no knowledge of the action is attached with liability without being given the opportunity to explain why the default judgment should not be I entered against him. Order 10 r. 1(1) is reproduced below:

Order 10. Service of originating process: General provisions

General provisions (O. 10 r. 1)

1(1) Subject to the provisions of any written law and these Rules, a writ shall be served personally on each defendant or sent to each defendant by prepaid A.R. registered post addressed to his last known address or by means of electronic communication in accordance with any practice direction issued for that purpose and in so far as is practicable, the first attempt at service must be made not later than one month from the date of issue of the writ.

[28] In the affidavit of service (encl. 3 p. 23) there is an A.R. registered card carrying a date of 13 July 2020 purportedly signed by a recipient by the name of Saniah (encl. 3 p. 36).

[29] The appellant admitted that there is a typographical error in the address but asserted that the respondent had received the writ and SOC which were posted to the respondent under a cover letter dated 14 July 2020 all enclosed in one envelope (encl. 3 p. 44, paras. 6 and 7) with the postal number of RA355429336MY. This same postal number can be seen on the A.R registered card (*supra*).

[30] The respondent whilst admitting (encl. 3 p. 14 para. 7) having received a letter dated 13 July 2020, which was addressed to the said address no. 26 (encl. 3 p 39), however, categorically denied that she had received the writ and SOC sent under the appellant's cover letter dated 14 July 2020 (encl. 3 paras. 4 and 5).

[31] Each then proceeded to assert the other is not speaking the truth.

[32] Against the contradictory averments, the court observed from the contemporaneous documents that the covering letter enclosing the writ and SOC exhibited in the affidavit of service, is in fact dated 14 July 2020 (encl. 3 p. 25) and the A.R. registered card is dated one day earlier, 13 July 2020 (encl. 3 p. 36).

[33] Although the postal number of RA355429336MY, which is endorsed on the A.R. registered card with the date of 13 July 2020 is seemingly affixed to the covering letter of 14 July 2020, I accept the submissions of the respondent that as a matter of logic and common sense, one cannot possibly send out a letter dated 14 July 2020 by way of A.R. registered post one day earlier, ie, 13 July 2020.

[34] Further, it cannot be denied that the writ and SOC together with the covering letter dated 14 July 2020 carried the said address no. 26.

[35] Wherefore, I was minded to hold and did hold that the writ and SOC were not served upon the respondent and on that ground the JID was irregular and properly set aside by the learned Sessions Court Judge, a decision which I am *ad idem*.

[36] Although I had decided thus, given the diametrically opposed positions taken by the appellant and the respondent, I decided to take the matter further to consider whether the JID ought to be set aside if the JID had been regularly obtained ie, it was obtained after due service of the writ and SOC.

Regular JID

[37] In order to successfully set aside a regular JID, all that needs to be shown by the respondent is that she has a defence on the merits.

[38] Contrary to Tan Sri Darshan's assertion in his submissions that the respondent ought to have filed a draft defence, there is no such requirement. Indeed, in the Federal Court case of *Lai Yoke Ngan & Anor v. Chin Teck Kwee & Anor* (*supra*), which was cited by him, it was held that:

> … when the default judgment has been obtained regularly, in order to succeed the defendant must file an **affidavit of merits,** which must disclose that he has a defence on the merits and that he has an arguable or triable issue on the merits. (emphasis added)

[39] The above principle has been adopted by the High Court in several cases. It was similarly laid down by the Court of Appeal in *Lee Hee Hong v. EON Bank Bhd* [2014] 1 LNS 600; [2014] 5 MLJ 808 that a failure to exhibit a draft defence is not fatal.

[40] What is of importance is that the affidavit or affidavits filed in support of the application to set aside the JID show:

> "… a defence which have some merits or which the court should try." as per His Lordship, Haji Mohd Jemuri Serjan CJ (Borneo) in *Hasil Bumi Perumahan Sdn Bhd & Ors v. United Malayan Banking Bhd* [1994] 1 CLJ 328 at 329; 1 MLJ 312 at 321 (SC). See also *Sensini Marketing Sdn Bhd v. Hong Da Fesyen Sdn Bhd* [2020] 1 LNS 257 (HC) and *Sergeant Salleh Zakaria & Anor v. Datuk Ramlee Marahaban (supra).*

[41] Before going into the merits, there is a procedural hurdle that the respondent has to overcome, that is, if the JID is regular, the application has to be filed within 30 days after the receipt of the order or judgment by the applicant. This is provided by O. 42 r. 13 of the Rules of Court 2012, which is reproduced below:

> Save as otherwise provided in these Rules, where provisions are made in these Rules for the setting aside or varying of any order or judgment, *a party intending to set aside or to vary such order or judgment shall make an application to the Court and serve it on the party who has obtained the order or judgment within thirty days after the receipt of the order or judgment by him.* (emphasis added)

[42] The appellant deposed that they had posted a copy of the JID to the respondent under cover of their letter dated 18 August 2020 (encl. 3 pp. 63 to 66) and by reason of that the respondent is out of time in her application to have the JID set aside.

[43] I observed that the said covering letter is also addressed to the respondent at the address no. 26 and not the address no. 2C and I give the benefit of doubt to the respondent that it was not received by her.

[44] From the narration of the background facts as stated above, I accept that the respondent instead obtained the case number for the recovery suit from the RHB Bank Bhd on 13 October 2020, passed it on to her current solicitors who did a file search and had filed the application within two days thereafter. Thus, the solicitors had filed the application way within the prescribed time.

[45] With that, I now come to the issue as to whether from the affidavits filed, the respondent has disclosed a defence on its merits to the appellant's claim.

[46] A perusal of the averments housed within the affidavits stated above shows the following:

(i) It is indisputable that there were two civil suits initiated on behalf of the respondent and her affected family members, in particular, her son in the Seremban Sessions Court premised upon the 2014 road accident;

(ii) The two suits are:

(a) the Civil Suit No. A53KJ-53-01-2015 filed through the law firm of the appellant; and

(b) the Civil Suit No. A53KJ-264-06-2016 filed through the law firm of Messrs G. Dorai & Co. (encl. 3 p. 47, paras. 29 and 30);

(iii) The respondent asserts that the work was done by Messrs G Dorai & Co. (encl. 3 pp. 71 and 72, para. 12) and it was this firm which sent her son to see the (medical) specialists whereas the appellant did not do so;

(iv) As for the assertions made by Tan Sri Darshan that he had been making attendances at the High Court at Seremban and the Court of Appeal, the respondent stated that her solicitors advised her after checking with Mr. Anpalagar of the law firm of Messrs Anad & Noraini and Mr. Razlan of the law firm of Messrs Gan Ho & Razlan Hadri, that Tan Sri Darshan did not make any such attendances and that on the day of the hearing in the Court of Appeal, the panel of the Court of Appeal did not allow Tan Sri Darshan to submit as he did not have the mandate to do so (encl. 3 p. 72, para. 12);

(v) However, Tan Sri Darshan exhibited a draft order of the Court of Appeal (Rayuan Sivil No. N-02(NCVC)(A)-422-03-2016) dated 22 March 2017 (encl. 3 pp. 177 to 180, specifically p. 178), which shows that he did appear in the Court of Appeal representing the respondent and her family members;

(vi) The respondent, however, asserted that the appellant did not file any documents in the High Court at Seremban and in the Court of Appeal (encl. 3 p. 72 para. 12);

(vii) The appellant then pointed out that they have exhibited documents (encl. 3 pp. 113 to 180) to show correspondences entered into with the law firms of Messrs Anad & Noraini and Messrs Gan, Ho & Razlan Hadri and from these documents, the court could infer that the underlying issue being addressed was which insurance company was to be liable for the 2014 road accident with the inference that they did do work relating this 2014 road accident;

(viii) Tan Sri Darshan categorically asserted that the appellant never received the letter of termination said to have been posted by the respondent and have no knowledge of the alleged termination of their appointment;

(ix) From the documents exhibited by both the appellant and the respondent there is mention of both the suits in the Seremban Sessions Court with two separate law firms being placed on record as acting for the respondent and her family members for the same 2014 road accident;

(x) Related to the above would be the reasonableness of the charges that the appellant had levied bearing in mind:

(a) the respondent's assertion that she had terminated the services of the appellant by a letter dated 5 December 2014 (encl. 3 p. 89) although this was categorically denied by the appellant (encl. 3 p. 97, para. 35);

(b) the respondent's contention that whatever the appellant had done after 5 December 2014, was done without her instructions (encl. 3 p. 74, para. 22);

(c) the appellant's assertion that they had proceeded to carry on with the work because they never received any notice be it by letter, email or telephone call from any solicitor seeking their consent to take over as is required by r. 54 of the Legal Profession (Practice and Etiquette) Rules 1978 which is reproduced below:

Advocate and solicitor not to appear for a party represented by another advocate and solicitor.

Where in any matter or proceeding, the name of any advocate and solicitor or the name of his firm appears on the records for any party, or an advocate and solicitor is known to be acting for a party in a matter whether in a Court or not, no other advocate and solicitor shall knowingly agree to appear or to act or continue to appear or to act for such party in such matter or proceeding unless:

(a) he obtains the consent of the first-named advocate and solicitor; or

(b) he is satisfied that the proper professional remuneration of the first-named advocated and solicitor has been paid or he undertakes that the same will be paid; or

(c) he has, in ignorance that such name so appears on the record or that such advocate and solicitor has been so acting, already agreed to appear or to act for such party and is unable by reason of circumstances or urgency or the like to refuse to appear or to act further for such party, without exposing himself to a charge of breach of professional duty; or

(d) the first-named advocate and solicitor is unwilling or has refused to act further for such party, in which event he shall, if so required, protect any lien which the first-named advocate and solicitor may have for costs.

(d) that there are two firms of solicitors, each managing a civil suit premised upon the same 2014 road accident underscores the issue as to what was the nature and extent of work that each had done for the respondent; and

(e) that the respondent having denied receiving the appellant's bill of costs dated 21 June 2018 (encl. 3 pp. 199 to 202) which was sent out only on 22 October 2018 (encl. 3 p. 203) and addressed to the respondent at address no. 26.

[47] In summary, whether the appointment of the appellant was terminated on 5 December 2014, the extent of the professional services rendered by the appellant to the respondent and the amount billable are issues which call for further investigations at trial. In other words, as the charges sought to be levied will have to be assessed against these issues, it cannot be denied that the respondent has a defence on its merits, see *Hasil Bumi Perumahan Sdn Bhd & Ors v. United Malayan Banking Bhd* (*supra*).

A **Alleged Admission**

[48] We now come to the letter dated 1 October 2020 executed by the respondent and duly witnessed by the respondent's brother-in-law, one Azman bin Saarani, where the respondent had agreed to pay a sum of RM100,000 being the amount which she is alleged to have said was the B amount she could only afford then (encl. 3 p. 46, para. 20 and p. 68). The appellant submitted that this clearly amounted to an admission of liability on the part of the respondent.

[49] However, the respondent asserted that she was forced to execute it (encl. 3 p. 73, para. 14) based on the representations made by Tan Sri C Darshan that he had attended to matters at the High Court and Court of Appeal and that he had made a total of 28 court attendances and to her mind, a lawyer would not take advantage of her but as it turned out, she was informed that Tan Sri Darshan had never attended at the High Court at Seremban (encl. 3 p. 72, para. 13).

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[50] In view of the assertions made by the respondent, in my view, the contents of the letter dated 1 October 2020 cannot be said to be an unequivocal admission of fees owing to the appellant but an acknowledgement of a debt contingent on services having been duly carried E out, see *Wee Tiang Teng v. Ong Chong Hooi & Anor* [1978] 1 LNS 234 (FC). Whether the services were duly carried out, is another issue to be determined at trial.

Conclusion

[51] Wherefore, the court had dismissed the appellant's appeal with costs. F Upon asking the parties to submit on the quantum of costs, the court was informed that they had agreed that costs shall be quantified at RM3,000 irrespective of who succeeds. Accordingly, the court awards the respondent the agreed costs of RM3,000 subject to allocator to be paid by the respondent.

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[52] After the dismissal of the appeal, learned counsel for the appellant, Tan Sri Darshan sought for a stay of the order so that the monies in the respondent's account which had been garnished could remain frozen. A query was posed by this court as to what is the legal provision that he is relying upon in aid of such an application and Tan Sri Darshan replied that H whether rightly or wrongly, this was an order which he was able to obtain in the Sessions Court to preserve the funds therein. With the JID having been set aside, there is no judgment extant for execution proceedings and I, therefore, refused the application. Upon the application of the learned counsel for the respondent, I granted a consequential order that the monies I which had been frozen by reason of the execution proceedings and which had

remained frozen despite the learned Sessions Court judge has set aside the JID, be released, see *Stone World Sdn Bhd v. Engareh (M) Sdn Bhd* [2020] 9 CLJ 358 FC where it was held that it is perfectly appropriate for a party to have applied for and be subsequently granted a consequential order on such terms as would give effect to the final order.

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